IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

MANA RAM VERSUS STATE OF RAJASTHAN

S.B.CRI. APPEAL NO.946/2006

AGAINST THE JUDGMENT DATED 25.8.2006 IN SESSIONS CASE NO.97/2005 PASSED BY SHRI R.K.JAIN R.H.J.S. SPECIAL JUDGE N.D.P.S CASES COURT, UDAIPUR WHEREBY HE CONFISCATED VEHICLE TRUCK NO.RJ-19-G-9170 AND ORDERED TO BE AUCTION.

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Date of Judgment:- 26.4.2007

PRESENT
HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr.B.S.Rathore,counsel for the appellant.
Mr.J.P.S. Choudhary, Public Prosecutor.

BY THE COURT -

This appeal is directed against the judgment and order dated 25.8.2006 passed by the learned Special Judge, N.D.P.S. Cases Udaipur, in Sessions case No.97/2005 whereby he confiscated the vehicle truck bearing No.RJ-19-G-9170 and ordered to be auction.

2. Prosecution case is that as under :

In the intervening night of 14.10.2003 and 15.10.2003 Truck No.RJ 19G- 9170 which was finance by the TATA Finance was stopped due to non payment of instalments by Mohammed Shakil . Rizvanuddin, and Nepal Singh at Pratapnagar Chorya,Udaipur and behind Qualis car No.RJ 19-1C-6666 was escorting in which accused Ramdeen was sitting and he boarded and gave assurance that instalments will be paid very soon but they refused and took the truck to office of the TATa Finance company,Udaipur and keep the same in yard On 17.10.2003 informer Adarsh Kumar gave information that Truck No.RJ 19G-9170 in which Ramdeen brought Doda Post from Chittorgarh to Udaipur on this information and on search of truck by the police, it was found that there was 104 bags of fodder and beneath them 131 bags of Doda post was weighing3135kilo 500 grams and truck was seized and accused was arrested and charge sheet was filed against him.

After hearing the accused Ramdeen on charge, learned Judge framed charge for offences under sections 8/15 and 29 of the NDPS Act,he denied the same and claimed trial and said that he has been falsely implicated in this case.By separate order dated 25.8.2006 he has been acquitted which is

not part of of this appeal.

Learned counsel for the appellant states that this appeal is against the order of the learned trial Court to the extent whereby the learned trial Court confiscated the vehicle truck bearing No.RJ 19-G- 9170 and ordered to be auctioned.

Learned counsel for the appellant also states that iut is specifically mentioned that appellant Mana Ram is owner of the vehicle and it has been stated in the charge sheet that he has not been arrested so the appellant is not facing trial in this case and before confiscation of the vehicle as per provisions of Section 60 and 63 of the NDPS Act it was mandatory that opportunity of hearing should be given to the owner of the vhicle and in this case no such notice or opportunity of hearing has been given and without that opportunity, this vehicle has been confiscated so as per view taken by this Court in a case reported in 2006(1) Cr.L.R.(Raj)320 Kailash & ors vs The State of Rajasthan it is not legally warranted and the order of confiscating vehicle should be set aside.

I have heard learned counsel for the appellant and Public Prosecutor for the State. I have also carefuly gone through the judgment and order impugned as also the record of

the trial court. I have also scrutinized, scanned and evaluated the evidence on record.

So far as order of confiscation of truck No.RJ-19-G-9170 in question is concerned, definitely there is no evidence that before ordering confiscation, the owner of the vehicle has been served with notice or was afforded any opportunity of hearing. Releasing of vehicle on Supurdgi-nama cannot be treated such notice and opportunity of hearing. It also appears that procedure provided under Sections 60 and 63 of the N.D.P.S Act having not been followed by the learned trial Court before ordering confiscation of the vehicle in question and, therefore, order of confiscating of vehicle Truck No.RJ-19-G-9170 deserves to be set aside.

Consequently, the appeal filed by the appellant is allowed and the impugned judgment dated 25.8.2006 passed by the learned Special Judge,N.D.P.S. Cases, Udaipur confiscating vehicle Truck No.RJ-19-G-9170 is hereby quashed and set aside, and, the matter is remanded to the trial Court to decide the matter afresh after affording an opportunity of hearing to the appellant and after following the due procedure of law as

envisaged under Sections 60 and 63 of the N.D.P.S. Act, 1985. Record of the case may be sent back forthwith.

(CHATRA RAM JAT),J.

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